

No. 11,715

IN THE

**United States Circuit Court  
of Appeals**

FOR THE  
**Ninth Circuit**

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EDGAR A. SADLER,

*Appellant,*

vs.

CLARENCE T. SADLER,

*Appellee.*

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**PETITION BY APPELLANT  
FOR RE-HEARING**

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H. R. COOKE

JOHN D. FURRH, JR.

*Attorneys for Petitioner-Appellant.*



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TO THE HONORABLE THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT:

NOW COMES the above-named Appellant, EDGAR  
A. SADLER, and respectfully petitions the above-entitled

Court for a re-hearing hereof, upon the following grounds and for the following reasons:

I.

In the decision and opinion of the Court, the Court established as the law of this Circuit that a finding may be made by trial court that a property interest of an absent party belongs to plaintiff in such action.

II.

In its decision and opinion, as it appears to Appellant, the Court ruled that a person owning a non-severable interest in property, was not an indispensable party to an action for the establishment of a trust and an accounting in respect of such property.

III.

By the said opinion and decision, as appears to Appellant, the Court holds that despite a lack of jurisdiction of the District Court for want of indispensable parties, said Court may nevertheless proceed with the parties before it, and adjudicate their rights, and the defect of absence of an indispensable party could be cured by said Court reserving the question of the rights of such absent indispensable party for later determination, at which the absent indispensable party might appear and be heard. Appellant's claim is that jurisdiction, *i. e.*, presence of indispensable parties, must exist

in lower court before any valid judgment therein can be entered.

#### IV.

Appellant contends that the said opinion and decision are in conflict with a case previously decided by the Supreme Court of Nevada (*Cooney v. Pedroli*, 49 Nev., 55; 215 P., 637), and that the law of the State was thereby established to be that when so long a time (22 years) had elapsed and defendant was in open possession, exercising dominion over the alleged trust property as his own, laches precludes alleged beneficiaries, irrespective of any repudiation of the claimed trust, because of the inability of a court of equity under the circumstances to do justice to the parties.

WHEREFORE, Appellant respectfully petitions the Court for a re-hearing herein.

Dated: April 13, 1948.

H. R. COOKE  
JOHN D. FURRH, JR.  
First National Bank Building  
Reno, Nevada  
*Attorneys for Petitioner-Appellant.*

CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition, in our opinion, is well founded and is not interposed for delay.

Dated: Reno, Nevada, April 13, 1948.

H. R. COOKE  
JOHN D. FURRH, JR.  
First National Bank Building  
Reno, Nevada

*Attorneys for Petitioner-Appellant.*